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NO. 82-489

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

TEMORA TRADING CO., INC.,

Petitioner,

vs.

WALLACE PERRY as Trustee
of the Bankrupt Estate of
Boyd James O'Donnell and
Joan O'Donnell, Bankrupts,

Respondent.

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Respondent Wallace Perry, Trustee, respectfully opposes petitioner's request for review of the decision of the Supreme Court of the State of Nevada.

INTRODUCTION

This Court grants certiorari ". . . only when there are special and important reasons . . .". There are no such reasons in this case and since certiorari in this Court

is not a "matter of right",[1] petitioner attempts to bootstrap himself within this Court's jurisdiction by arguing that the issues involved reach constitutional dimensions. However, it will become evident to this Court, as it did to the Nevada Supreme Court, that the district court's[2] choice of sanctions (the striking of Temora's answer and entering default judgment), was not an abuse of discretion, in light of Temora's deliberate and willful refusal to make discovery.

There are no special or important reasons justifying consideration of the petition for a writ of certoriari and it should be denied.

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[1] Sup.Ct.R. 17; 85 F.R.D. 435, 438.

[2] The District Court of the Fourth Judicial District of the State of Nevada, in and for the County of Elko (hereinafter "district court").

STATEMENT OF THE CASE

This case is the culmination of over a decade of litigation involving fraud, perjury and the willful violation of court orders. Moreover, this is the second petition for certiorari[3/] to this Court in this case. The judgment challenged by petitioner is the final chapter in the epic struggle of the creditors of one Boyd James O'Donnell (hereinafter "O'Donnell"), to successfully navigate the exotic, fraudulent devices O'Donnell employed to place his substantial assets beyond their reach. The objective of these creditors, a number of parcels of real property in California and Nevada, which were at one time owned in fee simple by O'Donnell, now appear to constitute 100% of the real property assets of petitioner Temora Trading Company (hereinafter "petitioner" or "Temora").

In 1968, O'Donnell purported to

3/ U.S. v. O'Donnell, 539 F.2d 1233 (9th Cir. 1976), cert. denied, 429 U.S. 960 (1976).

convey all of his substantial assets to a "James Gleason". Soon after receiving all of O'Donnell's properties, "Gleason" allegedly transferred them to Temora, a Bahamian corporation, in return for most of its stock. The Temora stock was then transferred to a Liechtensteinian trust, Nuovo Anstalt. Thus, the original O'Donnell properties became controlled by a Liechtenstein trust.

In 1970, the O'Donnells declared bankruptcy[4/] and claimed all of their assets had been conveyed to "Gleason" leaving nothing for their creditors. Their discharge was ultimately denied[5/] for a number of reasons, most of which concerned O'Donnell's false statements during the course of the bankruptcy proceedings. The Ninth Circuit Court of Appeals affirmed the order of the

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4/ In re Boyd James O'Donnell & Joan O'Donnell, Nos. 70-414 and 70-415 (D. Ariz. 1970).

5/ In re Boyd James O'Donnell & Joan O'Donnell, Nos. 70-414 and 70-415 (D. Ariz., August 17, 1974).

Bankruptcy Court refusing to grant the discharge in January, 1978.[6] O'Donnell's false testimony in the bankruptcy trial resulted in a federal perjury conviction. The Ninth Circuit affirmed that conviction[7] and this Court denied certiorari.[8]

During the pendency of the O'Donnell bankruptcy proceedings, respondent, on a number of occasions, attempted to quiet title to the real property. These substantial real estate holdings were conveyed to a variety of fictitious persons,[9] foreign corporations[10] and foreign trusts,[11] but all were owned and

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[6] In re Boyd James O'Donnell & Joan O'Donnell, No. 75-2189 (9th Cir., Jan., 1978).

[7] U.S. v. O'Donnell, 539 F.2d 1233 (9th Cir. 1976), cert. denied 429 U.S. 960 (1976).

[8] 429 U.S. 960 (1976).

[9] James Gleason.

[10] Temora Trading Company, Ltd.

[11] Nuovo Anstalt and The Channel Island Trust.

controlled by O'Donnell. Since a transfer of property to a fictitious person is void and of no legal effect[12] and since Temora claims its title through "James Gleason", any claim on the part of Temora would fail if the transfers from O'Donnell to "Gleason" were nullities. The transfers were found to be fraudulent by the district court[13] and those findings were affirmed by the Nevada Supreme Court.[14]

Temora is alleged to be a legitimate enterprise owned and controlled by undisclosed principals. However, the uncontroverted facts before the district court and the Supreme Court of Nevada, clearly proved

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12/ Gayle v. Jones, 63 F.Supp. 481 (W.D. La. 1945).

13/ Perry v. O'Donnell, No. 14762 (Dist. Ct. Nev., July 13, 1981) (order granting plaintiff's motion to dismiss for failure to make discovery, and summary judgment). See petitioner's Appendix C-19.

14/ Temora Trading Company, Ltd. v. Perry, 645 P.2d 436 (Nev. 1982). See petitioner's Appendix A.

Temora to be nothing more than an instrumentality of O'Donnell's fraudulent scheme. Hence, it was not surprising that in 1976, the stock of Temora was transferred from the Liechtensteinian trust to a trust on the Isle of Guernsey. The beneficiary of that trust was O'Donnell. In some inexplicable way, O'Donnell ended up with control over the same properties that prior to filing for bankruptcy years earlier, he had transferred to "James Gleason".

"James Gleason" was and is a fictitious person, invented by O'Donnell for the purpose of placing his assets beyond the reach of his creditors. There is ample testimony in the record below that "Gleason" did not exist.[15/] For example, the attorneys who incorporated Temora testified they never

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15/ Brief for appellee, pp. 6-34, Temora Trading Company, Ltd. v. Perry, 645 P.2d 436 (Nev. 1982).

heard of or met a "James Gleason".[16] In addition, although "Gleason's" purported multimillion dollar real estate empire and the question of his very existence were being litigated over an 11-year period, "James Gleason" never once appeared.

Despite the fact that O'Donnell's discharge in bankruptcy was denied, all of O'Donnell's properties still remained outside the bankruptcy estate and therefore beyond the claims of his creditors. In an effort to regain the O'Donnell properties, an action was filed in Nevada by respondent-trustee on September 1, 1977.[17] This petition for certiorari arises out of that action. As finally amended, on or about May 14, 1980, the action sought to quiet title to the properties located in Elko County, Nevada.

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[16] Affidavit of Ralph David Seligman.

[17] Perry v. O'Donnell, No. 14762 (Dist. Ct. Nev., September 1, 1977) (complaint to quiet title to real property).

It also sought a mandatory injunction against Temora, ordering it to convey back certain real properties located in California, that had been fraudulently conveyed.

Respondent served interrogatories on Temora in January, 1978. Two months later, respondent received a smattering of responses in which nearly every interrogatory was objected to on grounds of relevance. Two years, eight months, 29 days and three orders compelling discovery later, Temora, through its attorney Richard Moneymaker, filed additional answers. Despite three court orders to answer all interrogatories,[18] Temora refused to answer six interrogatories and knowingly gave false information in response

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[18] Record on appeal, pp. 637-638, 1175-1177, 1381-1382, Temora Trading Company, Ltd. v. Perry, 645 P.2d 436 (Nev. 1982).

to at least 20 others.[19] O'Donnell's deposition testimony was similarly devoid of much factual basis.

Petitioner, its attorney Moneymaker and O'Donnell refused to comply with and blatantly defied the Nevada court's orders. This callous disregard for the district court's authority, in and of itself merited dismissal. However, this was not the end of the petitioner's contumacious conduct. On March 12, 1981, the depositions of Temora's officers, Donald Aberle, Anthony F. Bowe, and Lorraine D. Burrows, were duly noticed. These depositions were to be held at the American Embassy in Nassau, Bahamas, on April 2 and 3, 1981. After these depositions were noticed and prior to the time plaintiff's counsel left for the Bahamas, there were a

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[19] Perry v. O'Donnell, No. 14762 (Dist. Ct. Nev., July 13, 1981) (order granting plaintiff's motion to dismiss for failure to make discovery, and summary judgment). See petitioner's Appendix C-19.

number of conversations between counsel. Temora's counsel never gave any indication that its officers would not appear or participate as contemplated by the Nevada Rules of Civil Procedure. Nor did counsel state that it would claim a privilege under Bahamian law. Nor did counsel seek any protective orders.

At about 1:30 p.m., April 2, 1981, Temora's president failed to appear for his deposition.[20] Instead, Mr. Moneymaker appeared with a number of documents, but no deponents. Although the court on at least two occasions,[21] expressly ruled the relationship between Temora and O'Donnell to be relevant to this action, Moneymaker intentionally failed to bring any documentation or

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[20] Perry v. O'Donnell, No. 14762 (Dist. Ct. Nev., July 13, 1981) (order granting plaintiff's motion to dismiss for failure to make discovery, and summary judgment). See petitioner's Appendix C-18.

[21] See footnote 18.

correspondence pertaining to that relationship. Moneymaker had a Bahamian attorney make an incorrect statement about Bahamian law and the parties left.

The district court was quickly informed of Aberle's nonappearance late in the afternoon of April 2, 1981. At that time, one of respondent's counsel was sitting helplessly in Nassau, Bahamas, with no one to depose. The court realized that counsel had traveled to the Bahamas at great expense and had incurred thousands of dollars in attorneys' fees. Moreover, appreciating the time difference between Nevada and the Bahamas, it was important to transmit the contents of an order quickly, so that it could be communicated to Temora's counsel before he could leave the island. Under these circumstances, the district court obviously concluded it was acting in an emergency situation and the

discovery order issued by the district court was appropriate under Nevada law.[22]

The district court immediately entered an order compelling Temora to present all its officers the following day or face appropriate sanctions.[23] The court's order was communicated to Moneymaker that evening. Despite the clarity of the court's order, Moneymaker brazenly flaunted the court's authority by again failing to produce any of the witnesses. Moreover, he refused to produce any of the documentation surrounding Temora's relationship with Boyd O'Donnell, stating it would just be far too burdeonsome to assemble for inspection the 20 or so letters concerning O'Donnell.

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[22] Rules 30(b) and 26(c) N.R.C.P.; cf. Monroe, Ltd. v. Central Telephone Company, 91 Nev. 450, 538 P.2d 152 (1975).

[23] Perry v. O'Donnell, No. 14762 (Dist. Ct. Nev., April 2, 1981) (order compelling discovery). See Appendix A.

No great imagination is required to conclude that O'Donnell and Moneymaker were in the process of perpetrating a fraud upon the district court and were frustrating any attempt by the respondent to prove it. On April 16, 1981, respondent brought a motion to dismiss and for summary judgment. This motion was based in part on the failure of Temora's officers to appear for scheduled depositions. In ruling on this motion, it was evident to Judge McDaniel that petitioner had made a circus out of the discovery process. Under these circumstances the district court was not obligated to endure the O'Donnell and Moneymaker flimflam any longer. The court was presented with uncontroverted evidence that certain interrogatories contained false information. In addition Temora had refused to answer certain interrogatories and to produce certain documents, in direct violation of the court's order to do so. When Temora also failed to produce its officers

for depositions on April 2, 1981, in direct violation of his order, Judge McDaniel had a solid basis for dismissing Temora's answer and awarding default judgment. Therefore, on July 13, 1981, after reviewing the motion to dismiss and petitioner's response to that motion, Judge McDaniel issued an order granting respondent's motion to dismiss for failure to make discovery and summary judgment.[24/] The Nevada Supreme Court affirmed Judge McDaniel's findings on May 27, 1982,[25/] and denied petitioner's motion for rehearing on June 23, 1982.[26/]

The petitioner's fraudulent conduct and disregard for judicial authority warrant the denial of the petition for certiorari without regard to the merit, if any, of its legal position.

[24/] See Appendix A.

[25/] Temora Trading Company, Ltd. v. Perry, 645 P.2d 436 (Nev. 1982). See petitioner's Appendix A.

[26/] See petitioner's Appendix B.

ARGUMENT

THE SANCTIONS IMPOSED ON TEMORA WERE NOT AN ABUSE OF THE DISTRICT COURT'S DISCRETION.

Temora fails to appreciate the basic legal issue in this case and accordingly many of its arguments are misdirected. For example, neither the statute of limitations issue nor the res judicata issue are subject to this Court's review. Neither issue led to the default judgment by the district court nor did the Nevada Supreme Court concern itself with either issue. The sole issue raised by the petition is, whether the trial judge abused his discretion (and violated petitioner's constitutional rights) when he imposed sanctions for petitioner's willful and deliberate noncompliance with the discovery rules and the court's discovery orders.

When it is determined that counsel or a party has acted willfully or in bad faith in failing to comply with rules of

discovery or with court orders enforcing the rules it is within the discretion of the trial court to dismiss the action or to render judgment by default against the party responsible for noncompliance. Federal Rules of Civil Procedure 37.[27] Under Rule 37, the courts have an arsenal to assure discovery against the obfuscating or reluctant party. Cine Forty-second Street Theatre Corporation v. Allied Artists Pictures Corporation, 602 F.2d 1062 (2nd Cir. 1979). Severe sanctions may issue for failure to obey an order to provide discovery. Here, the court struck Demora's answer and granted default judgment to respondent. The facts clearly indicate that the trial judge acted properly; litigants who are willful in halting the discovery process act in opposition to the authority of the court and cause impermissible prejudice to their opponents. It is even more important

[27] N.R.C.P. Rule 37 is identical to Fed.R.Civ.P. 37.

to note, in this era of crowded dockets, that they also deprive other litigants of an opportunity to use the courts as a serious dispute/settlement mechanism. In short, while the sanction of dismissal cannot be imposed lightly, it is available to the court to ensure the efficient and fair use of discovery. "Without adequate sanctions the procedure for discovery would be ineffectual", Wright & Miller, Federal Practice & Procedure: Civil § 2281; see also, Ohio v. Arthur Anderson & Co., 570 F.2d 1370, 1376 (10th Cir. 1978), cert. denied, 439 U.S. 833 (1978).

It is well-settled, under the standards set forth in National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976), per curiam; and Societe Internationale v. Rogers, 357 U.S. 197 (1958), that the entry of a dismissal or default judgment under Rule 37 requires a showing of "willfulness, bad faith, or fault" on the

part of the noncomplying party.[28] It is equally well-settled that the choice of an appropriate discovery sanction is primarily the responsibility of the trial judge and will not be reversed absent an abuse of discretion. National Hockey League, supra at 642.

The trial judge should tailor the choice of sanction to the severity of the misconduct and the judge must have considerable latitude to make the sanctions serve their function as both specific and general deterrents. Id. at 643. The Court in National Hockey League stated that in reviewing this issue, the question is not whether this Court or the Court of Appeals would have chosen to dismiss the suit, but whether the District Court abused its discretion in doing so. Id. at 642.

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[28] Also see Finkelman v. Clover Jewelers Boulevard, Inc., 91 Nev. 146, 532 P.2d 608 (1975); and Skeen v. Valley Bank of Nevada, 89 Nev. 301, 511 P.2d 1053 (1973).

Petitioner contends that its noncompliance with discovery procedures and discovery orders was not willful and therefore the sanctions imposed denied it due process.[29] Petitioner bases this contention on its unjustifiable reliance on a privilege under Bahamian law. Temora's reliance on its privilege was unjustified for several reasons:

1. On August 11, 1980, respondent made a motion to compel discovery.[30] On August 28, 1980, petitioner filed a response to that motion.[31] In that response, petitioner argued its Bahamian privilege. On September 9, 1980, the district court overruled petitioner's arguments and issued an

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[29] Petitioner's brief for certiorari at p. 21.

[30] Perry v. O'Donnell, No. 14762 (Dist. Ct. Nev.) (plaintiff's motion for discovery order, filed August 11, 1980).

[31] Perry v. O'Donnell, No. 14762 (Dist. Ct. Nev.) (defendant's response to motion to compel discovery, filed August 28, 1980).

order compelling discovery.[32] Thus, as far back as September, 1980, petitioner was on notice that its privilege argument was not an acceptable defense to a proper discovery request.

2. Prior to the scheduled depositions on April 2, 1981, Temora never sought a protective order under N.R.C.P. 26(c).[33]

3. When Temora refused to appear for scheduled depositions on April 2, 1981, the district court issued an order[34] which compelled Temora's appearance, again rejected their privilege argument and warned Temora that appropriate sanctions would be entered if it failed to appear. Temora

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[32] Perry v. O'Donnell, No. 14762 (Dist. Ct. Nev., September 9, 1980) (order granting motion to compel discovery). See Appendix B.

[33] N.R.C.P. 26(c) is identical to Fed.R.Civ.P. 26(c).

[34] See Appendix A-1.

refused to appear in spite of a direct court order to do so.

The circumstances reveal that petitioner was fully aware of the consequences for its failure to comply with discovery orders. Temora cannot now be heard to justify its conduct on the basis of a self-inflicted misunderstanding of Bahamian law. Temora never sought to free itself from a duty to attend the depositions, nor from its duty to comply with the court's discovery order. Therefore, it was not surprising when the district court expressly ruled that Temora's failure to attend was willful and that sanctions were appropriate.[35/]

The mere assertion of a privilege is not sufficient to excuse noncompliance with a proper discovery request or a direct court order. Al Barnett & Sons, Inc. v. Outboard Marine Corporation, 611 F.2d 32 (3rd

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35/ See petitioner's Appendix C-18-19.

Cir. 1979). In the Barnett case the court held "litigants may oppose discovery requests by seeking a protective order from the court . . . they cannot frustrate discovery by refusing to comply with a proper request". 611 F.2d 32, 35. In addition, Temora was given another opportunity to be heard when respondent filed its action for sanctions. Temora filed a memorandum in opposition to respondent's motion. Temora suffered no violation of its due process rights and the judge's decision, based on all the facts and arguments, was clearly not an abuse of his discretion.

Before imposing any sanction, the court should look to the overall conduct of the litigation. Ali v. A&G Company, Inc., 542 F.2d 595 (2nd Cir. 1976). Ordinarily, default would not be invoked for an isolated incident of discovery misconduct. Wilson v. Volkswagen of America, Inc., 561 F.2d 494

(4th Cir. 1977), cert. denied 434 U.S. 1020 (1978). Petitioner's conduct, when viewed in its totality, represents flagrant bad faith and a callous disregard of a party's obligations under the discovery rules.

In fact, the district court's findings clearly show how extensive petitioner's abuses were: The court held (1) that Temora had submitted to the jurisdiction of the district court of Nevada; (2) that when the officers were noticed for depositions they were subject to the laws of the district court; (3) if Temora's officers chose to disregard that jurisdiction, sanctions would be imposed; (4) Temora's attorney, Richard Moneymaker, had "deliberately blocked and delayed plaintiff's efforts to make discovery"; (5) that Moneymaker, as Temora's attorney-in-fact, had "given false information in answering interrogatories"; (6) "that for the willful and deliberate refusal to make dis-

covery, the defendant's answer should be stricken and summary judgment entered for the plaintiff . . ."; and (7) that the "conveyances from O'Donnell or his entities to James Gleason were fraudulent conveyances . . .".[36/]

The Nevada Supreme Court upheld the district court's findings stating that it was "supported by substantial evidence, including Temora's history of obstructing discovery, as well as the failure of Temora's officers to appear for their depositions".[37/] Thus, the district court as well as the Nevada Supreme Court, made specific factual findings regarding Temora's willful and deliberate failure to cooperate in the discovery process and with court orders compelling discovery.

As the Supreme Court noted in National Hockey League, supra,

[36/] See petitioner's Appendix C-17-20.

[37/] Temora Trading Company, Ltd. v. Perry, 645 P.2d 436, 437 (Nev. 1982). See petitioner's Appendix A-5-6.

> The most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent. 427 U.S. at 643.

The district court's choice of sanctions in this case is also consistent with numerous decisions of the Courts of Appeals upholding the entry of dismissal orders and default judgments pursuant to Rule 37 of the Federal Rules of Civil Procedure.[38/]

CONCLUSION

The trial judge, having dealt with the parties and issues in this litigation for

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38/ For example, see, Hindmon v. National-Ben Franklin Life Insurance Corp., 677 F.2d 617 (7th Cir. 1982); Baker v. Limber, 647 F.2d 912 (9th Cir. 1981); Phillips v. Insurance Company of North America, 633 F.2d 1165 th Cir. 1981); Ross v. Meagan, 638 F.2d 646 (3rd Cir. 1981), per curiam; Affanato v. Merril Bros., 547 F.2d 138 (1st Cir. 1977); Lyell Theatre Corp. v. Loew's Corp., 682 F.2d 37 (2nd Cir. 1982).

almost four years, was in the best position to assess the need for the requested discovery and the petitioner's degree of noncompliance. The court patiently allowed the suit to proceed through four years of evasion and resistance to discovery. Indeed, the Nevada district court was even more tolerant of petitioner's failure to provide discovery than was the District Court in National Hockey League. Petitioner refused to answer interrogatories, gave false statements, refused to appear for depositions and willfully violated a number of other court orders. When faced with this persistent failure to respond to discovery and comply with its orders, the judge was forced to take action. In fact, no more serious refusal to comply with discovery is conceivable and the imposition of sanctions was well within the court's discretion.[39/]

[39/] N.R.C.P. 37; National Hockey League, supra; Finkelman, supra; Skeen, supra.

The conduct of Temora, and its representatives in this case, brought it within the ambit of Rule 37. The record presents a clear pattern of delay, deception and contumacious conduct on the part of petitioner. The court was reluctant to impose sanctions but the petitioner's misconduct left the court with no other viable alternative. There is nothing in the petition or the record which shows any abuse of discretion by the district court or any basis for this Court to grant the requested writ. Accordingly, the petition should be denied.

Respectfully submitted this 12th day of November, 1982.

HARRISON & LERCH, P.C.

BY Mark I. Harrison

Mark I. Harrison
650 North Second Avenue
Phoenix, Arizona 85003
Tele: (602) 257-5800
Attorneys for Respondent

CERTIFICATE OF MAILING

STATE OF ARIZONA)
) ss.
County of Maricopa)

The undersigned, a Notary Public in and for the County of Maricopa, State of Arizona, hereby states that under the direct supervision of Mark I. Harrison, Attorney for Respondent, she caused to be placed with Federal Express, a package containing the number of copies of the Brief in Response to Petition for Writ of Certiorari of Respondent addressed as follows:

The original and forty (40) copies were Federal Express to:

Alexander Stevas, Clerk
1 First Street, N.E.
Supreme Court of the United States
Washington, D. C. 20543

and

Two (2) copies were placed in the United States Post Office at Phoenix, Arizona, with Priority and First Class postage fully prepaid to:

Richard M. Moneymaker, Esq.
Suite 1702, Broadway Plaza
700 Flower Street
Los Angeles, California 90017

The above-mentioned mailings were accomplished on the 12th day of November, 1982.

Notary Public

My Commission Expires:
11/19/85

No. 14762

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

WALLACE PERRY, as Trustee of the Estates of BOYD JAMES O'DONNELL and JOAN O'DONNELL, Bankrupts,

Plaintiff,

vs.

BOYD JAMES O'DONNELL, TEMORA TRADING COMPANY, LTD., et al,

Defendants.

O R D E R

FILED
1981 APR-2 PH 4:09

The Plaintiff herein, by and through his attorneys, having moved ex parte for an Order to Compel Appearances for Depositions, and for Sanctions; and good cause having been shown therefor;

IT IS HEREBY ORDERED that LORRAINE D. BURROWS and ANTHONY F. BOWE appear for

depositions as scheduled on April 3, 1981, at the hours of 10:00 a.m. and 1:00 p.m. respectively; that DONALD B. ABERLE, appear for deposition at 1:00 p.m. on April 3, 1981; and

IT IS FURTHER ORDERED that any questions propounded at such depositions which relate to conversations and relationships between JAMES GLEASON, BOYD J. O'DONNELL and TEMORA TRADING COMPANY, LTD. are relevant, and are not privileged.

IT IS FURTHER ORDERED that should the above-named officers and directors of TEMORA TRADING COMPANY, LTD. fail to appear for such depositions, that the Court, upon a hearing duly and regularly set, will enter its Order for appropriate sanctions pursuant to Rule 37 of the Nevada Rules of Civil Procedure.

DATED this 2nd day of April, 1981.

/s/ Joseph O. McDaniel
DISTRICT JUDGE

No. 14762

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

WALLACE PERRY, as Trustee of the Estates of BOYD JAMES O'DONNELL and JOAN O'DONNELL, Bankrupts,

Plaintiff,

vs.

BOYD JAMES O'DONNELL, JOAN O'DONNELL, TEMORA TRADING COMPANY, LTD., a Bahamian corporation, MICHAEL W. MORGAN, BURTON BERGERON, EUGENE FOX, TED IVY, JAMES GLEASON, a fictitious person, NUOVO ANSTALT, a Liechtenstenian trust, and DOES I through 100, inclusive,

Defendants.

ORDER GRANTING MOTION TO COMPEL DISCOVERY

FILED
1980 SEP-9 PH 3:03
CLERK R.L. Kane
DEPUTY Win Birdlell

It appearing to the Court that on the 14th day of May, 1980, the Plaintiff filed

his Fourth Amended Complaint. On the 27th day of May, 1980, the Defendant TEMORA TRADING COMPANY, LTD., filed its Answer. On August 11, 1980, the Plaintiff filed a Motion for Discovery Order, and the Defendant TEMORA filed a Response to Motion on August 28, 1980.

Between 1966 and 1970, the real property, the subject matter of this litigation, situate in the County of Elko, State of Nevada, and in the County of Los Angeles, State of California, was owned by the Defendant BOYD JAMES O'DONNELL. Prior to his filing a Petition for Voluntary Bankruptcy, the real property was transferred through JAMES GLEASON to the Defendant TEMORA TRADING COMPANY, LTD. According to Plaintiff's Motion to Compel Discovery filed July 11, 1978, it is one of their theories that TEMORA is a dummy corporation established by said BOYD O'DONNELL in which to attempt to fraudulently conceal assets from the

Bankruptcy creditors and the Trustee in Bankruptcy. The Interrogatories directed to TEMORA and filed on January 26, 1978, are an attempt to discover what connection, if any, existed between said BOYD O'DONNELL and TEMORA at the time it was established, and thereafter.

TEMORA's attorney has objected to most of the Interrogatories in "that the information is not relevant." N.R.C.P. 26 (b)(1) provides in part as follows:

> "It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

TEMORA's objections are therefore overruled.

IT IS HEREBY ORDERED that an Officer of TEMORA TRADING COMPANY, LTD., not its attorney, answer the following Interrogatories filed on January 26, 1978, within 60 days of the filing of this Order: Inter-

rogatory No. 1; Interrogatories 4 through 13, both inclusive; Interrogatories 22 through 120, both inclusive.

DATED this 9th day of September, 1980.

/s/ Jos. O. McDaniel
DISTRICT JUDGE